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Capital punishment

Report of the Secretary-General

SUMMARY

The Economic and Social Council, in resolution 1745 (LIV), requested the Secretary-General to submit to the Council, at five-year intervals, starting in 1975, periodic analytical reports on capital punishment. The present document is the fourth such report, and is based on information concerning the use of and trends in capital punishment and on the legal changes, initiatives and research results compiled by the Secretary-General since 1984.

In pursuance of Economic and Social Council resolution 1986/10, section X, paragraph 2 (a), the Secretary-General submitted to the Committee on Crime Prevention and Control at its tenth session a report on the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty (E/AC.57/1988/9 and Corr.1 and 2). In the future, in accordance with Economic and Social Council resolution 1989/64, the reports on the question of capital punishment and on the implementation of the safeguards will be combined.

* E/1990/92.

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INTRODUCTION

1. In its resolution 1745 (LIV), the Economic and Social Council requested the Secretary-General to submit to the Council, at five-year intervals, updated and analytical reports on the question of capital punishment. The first report submitted by the Secretary-General in 1975 covered the period 1969 to 1973 (E/5616 and Add.1 and Corr.1 and 2). The second report, prepared in 1980 and covering the period 1974 to 1979 (E/1980/9 and Corr.1 and 2, Add.1 and Corr.1 and Add.2 and 3), was also submitted to the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Caracas from 25 August to 5 September 1980, in accordance with Economic and Social Council resolution 1980/142. The third report, for the period 1979 to 1983 (E/1985/43 and Corr.1), was considered by the Council in 1985 and the Seventh United Nations Congress, held in Milan, Italy, from 26 August to 6 September 1985, pursuant to Economic and Social Council resolution 1984/45.

2. The present document is the fourth such report, prepared mainly on the basis of information received from Member States for the period 1984 to 1988. As requested by the Economic and Social Council in its resolution 1989/64, it will be one of the documents before the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, to be held in Havana from 27 August to 7 September 1990.

3. In preparing this report, the Secretary-General took into account General Assembly resolution 32/61, in which the Assembly reaffirmed its resolution 2857 (XXVI) and Economic and Social Council resolutions 1574 (L), 1945 (LIV) and 1930 (LVIII). As emphasized in those resolutions, the main objective was that of progressively restricting the number of offences for which the death penalty might be imposed, with a view to its abolition.

4. The Secretary-General wishes also to refer to Council resolution 1979/22, in which the Council, inter alia, expressed its concern about the slow progress in restricting the number of offences for which capital punishment might be imposed. The Council decided that it was essential for future reports on capital punishment to contain the fullest possible information on the use of the death penalty in all countries, and requested the Secretary-General to make every effort to elicit full responses from all Governments.

5. In his notes verbales of 4 October 1989 and 9 January 1990, the Secretary-General requested Member States to submit information. At the time of writing, 55 Member States have responded. 1/

6. In pursuance of Council resolutions 1984/50 and 1986/10, section X, paragraph 2 (a), the Secretary-General submitted to the Committee on Crime Prevention and Control at its tenth session a report on the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty (E/AC.57/1988/9 and Corr.1 and 2). That report was based on replies from 74 countries and noted that the review justified the concern expressed by the Human Rights Committee that inadequate progress has been made towards abolishing or

limiting the application of the death penalty; 2/ that while the information provided suggested that the safeguards were adhered to, certain steps were necessary to ensure full compliance; that the final imposition of a capital sentence should not prejudice the offender's right to benefit from a lesser penalty in cases where subsequent legislation provided for it; that there was a need for adjusting national legislations in order to implement the safeguard calling for the prohibition of execution of insane capital offenders. Attention was also drawn to the offender's right to have adequate time and facilities for the preparation of a defence. That right should be considered in generous terms, so as to guarantee to the offender more legal protection than in non-capital cases. The information received showed that appeals against capital sentences were still discretionary in many countries: further progress was needed world wide to ensure that in the criminal legislation of retentionist States appeals became mandatory. The report concluded that, to promote the implementation of the safeguards, the text should be widely disseminated among criminal justice administrators (if it has not been incorporated in extenso or followed up in national legislations).

7. In future, in accordance with Economic and Social Council resolution 1989/64, the reports on capital punishment and the implementation of the Safeguards will be combined.

I. BACKGROUND

8. Of the 49 Member States that replied to the questionnaire for the first capital punishment survey (1969-1973), 23 were "abolitionist" and 26 were "retentionist". Of the 74 States replying to the second survey (1974-1978), which requested more information than the first survey, 47 were "retentionist", 26 "abolitionist" (including 16 by law for all crimes and 10 for ordinary crimes only) 3/ and one "divided" on the issue. Of the 64 States replying to the third survey (1979-1983), 39 were "retentionist" and 25 "abolitionist" (including 20 by law for all crimes and 5 for ordinary crimes only). These figures are indicative only of a response pattern, not of the status of capital punishment throughout the world.

9. Taking the responses of the third survey into account, the total number of reported sentences and executions by region in the period 1979-1983 was as follows: North Africa and the Middle East (total number of responses: seven), 113 capital sentences and 66 executions; Africa south of the Sahara (total number of responses: nine), 298 capital sentences and 227 executions; Asia and the Pacific (total number of responses: nine), 730 capital sentences and 53 executions; Latin America and the Caribbean (total number of responses: 16), 189 capital sentences and 23 executions; Eastern Europe (total number of responses: three), 54 capital sentences; Western Europe and other States (total number of responses: 20), 28 capital sentences and no executions.

10. The data received showed that the movement towards abolition had progressed somewhat. These conclusions were based on the decision of three countries to abolish capital punishment (France and Nicaragua for all crimes, El Salvador for ordinary crimes only) and an apparent decrease in the number of capital sentences

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and executions. It was difficult, however, to draw general conclusions, since the number of responding States was declining and there were different countries responding to the three surveys. Moreover, several "retentionist" countries did not provide data on the number of executions.

II. THE CURRENT SITUATION

A. Results of the fourth United Nations survey on capital punishment

11. For the fourth survey, covering the period 1984 to 1988, the situation became even more difficult. Replies were received from 55 Governments only: five from North Africa and the Middle East (Iraq, Jordan, Qatar, Tunisia and United Arab Emirates); two from Africa south of the Sahara (Mauritius and Cape Verde); nine from Asia and the Pacific (Brunei Darussalam, Indonesia, Japan, Maldives, Philippines, Republic of Korea, Singapore, Thailand and Tuvalu); 11 from Latin America and the Caribbean (Argentina, Bolivia, Colombia, Costa Rica, Ecuador, Haiti, Mexico, Panama, Peru, Uruguay and Venezuela); six from Eastern Europe (Byelorussian Soviet Socialist Republic, German Democratic Republic, Hungary, Poland, Union of Soviet Socialist Republics and Yugoslavia); and 22 from Western European and other States (Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Federal Republic of, Greece, Ireland, Liechtenstein, Luxembourg, Malta, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Turkey, United Kingdom of Great Britain and Northern Ireland and United States of America).

12. Of those States, 26 were totally abolitionist (Argentina, Australia, Austria, Bolivia, Cape Verde, Colombia, Costa Rica, Denmark, Ecuador, Finland, France, German Democractic Republic, Germany, Federal Republic of, Haiti, Liechtenstein, Luxembourg, Netherlands, New Zealand, Norway, Panama, Philippines, Portugal, Sweden, Tuvalu, Uruguay and Venezuela) (see annex III, table 5), six were abolitionist for ordinary crimes only (Canada, Malta, Mexico, Peru, Spain and United Kingdom of Great Britain and Northern Ireland) (see annex III, table 6) and 23 retained capital punishment (Belgium, Brunei Darussalam, Byelorussian SSR, Greece, Hungary, Indonesia, Iraq, Ireland, Japan, Jordan, Maldives, Mauritius, Poland, Qatar, Republic of Korea, Singapore, Thailand, Tunisia, Turkey, Union of Soviet Socialist Republics, United Arab Emirates, United States of America and Yugoslavia) (see annex III, table 4). Within the retentionist group, five countries (Belgium, Brunei Darussalam, Greece, Ireland and Maldives) may be considered as abolitionist de facto, since no executions had taken place for a considerable time.

13. An analysis of the replies by region shows that the countries from North Africa and the Middle East retain capital punishment. In the Asian and Pacific region eight countries retain capital punishment (although Brunei Darussalam and Maldives can be considered abolitionist de facto), while the Philippines and Tuvalu abolished the death penalty. The responding States from Latin America and the Caribbean abolished the death penalty (Mexico and Peru for ordinary crimes only). Of the Western European and other States five countries (Belgium, Greece, Ireland, Turkey and United States of America) retain capital punishment (Belgium, Greece

and Ireland could be considered abolitionist de facto), four countries are abolitionist for ordinary crimes only (Canada, Malta, Spain and United Kingdom) and the other 13 countries abolished the death penalty without exception. In Eastern Europe five countries retain capital punishment while the German Democratic Republic abolished the death penalty for all crimes in 1987. Mexico reported that, even though capital punishment is still mentioned in the Constitution, it has been replaced by imprisonment in the Criminal Code.

14. A more complete picture of world-wide trends is given in the report prepared by Roger Hood, submitted to the Committee on Crime Prevention and Control at its tenth session, and published as a special issue of the International Review of Criminal Policy. 4/ Additional information was also sought from non-governmental organizations, in pursuance of General Assembly resolutions 41/149, 42/143, 43/153 and 44/162 on human rights in the administration of justice.

15. According to data collected by the United Nations on the basis of the Hood report, which correspond to the most recent statistics published by Amnesty International in January 1990, 5/ 77 countries have abolished the death penalty either in law or in practice. The latest information shows that 39 countries have abolished the death penalty for all offences, while 17 have done so for all but exceptional crimes such as wartime crimes. Twenty-one countries can be considered abolitionist de facto; they retain the death penalty in law but have not carried out any executions for the past 10 years or more (see annex III, tables 1-3). The list of countries that have abolished the death penalty in law since 1976 shows that, in recent years, at least one country a year on average has abolished the death penalty in law or, having done so for ordinary offences, has proceeded to abolish it for all offences (see annex III, table 4). The new Constitution of Namibia, adopted recently, contains provisions abolishing the death penalty. Also, Czechoslovakia abolished capital punishment during the 28th Meeting of the National Assembly, held from 2 to 4 May 1990. But 92 countries still retain the death penalty, with little data available on its use, in terms of sentences or executions.

B. Legal changes and initiatives reported since 1984

16. Between 1984 and the middle of 1990 a total of 11 countries abolished the death penalty for all offences: Argentina (1984), Australia (1985), Cambodia (1989), Czechoslovakia (1990), German Democratic Republic (1987), Haiti (1987), Liechtenstein (1987), Namibia (1990), New Zealand (1989), Philippines (1987) and Romania (1989) (see annex III, table 4). Seven of these States responded to the inquiry.

17. According to the reply of Australia, the death penalty was abolished in Western Australia in 1984 and in New South Wales, by virtue of the Crimes (Death Penalty Abolition) Amendment Act, in 1985.

18. The German Democratic Republic reported that the State Council had decided on 17 July 1987 to abolish capital punishment. The change was made by order of the Peoples' Chamber, the legislative assembly of the German Democratic Republic, by virtue of the Fourth Criminal Law Amendment Act. This Act, which was published in

the German Democratic Republic Law Gazette 6/ provides for all the required changes to the Penal Code and the Code of Criminal Procedure.

19. According to the reply of the German Democratic Republic, the following factors contributed to the abolition of capital punishment:

> "The complete abolition of capital punishment was prompted by the awareness that even without that form of punishment GDR criminal law has all the necessary legal prerequisites to ensure the all-round protection of the State and its citizens from criminal encroachments. The development of the socialist State had progressed so far and, in particular, crime trends had changed so favourably that the situation permitted the elimination of the death penalty. Many years of court practice in the GDR confirmed that capital punishment is no longer needed, not even for the suppression of the gravest crimes. It was more than 10 years before its abolition that the death penalty was last imposed in the GDR. It was pronounced for the last time in 1976 against a Nazi and war criminal."

20. In Liechtenstein, capital punishment was abolished by the introduction of the Penal Code, which came into force on 1 January 1989. The reply of Liechtenstein stated that: "According to the previous law, the following crimes were punishable by death: homicide and high treason. However, the death penalty has not been applied for more than 200 years."

21. In New Zealand, the Abolition of the Death Penalty Act of 22 November 1989 removes the death penalty as the mandatory sentence for treason and substitutes it with life imprisonment. Similarly, the death penalty is removed as a sanction for offences under the Armed Forces Discipline Act 1971. The reply of New Zealand stated that:

> "The death sentence was last imposed for the crime of murder in 1961. The Crimes Act 1961 had not come into force at the time the case was heard. The death sentence was last executed in February 1957, in respect of a conviction that took place in 1956. Between 1957 and the coming into force of the Crimes Act 1961 on 1 January 1962, it was the practice of the Executive Council to commute all death sentences to life imprisonment. No one has ever been convicted of treason under the Crimes Act 1961 nor was anyone ever sentenced to death under the Armed Forces Discipline Act 1971. The Abolition of the Death Penalty Act, therefore, merely seeks to legitimize New Zealand's de facto abolitionist status."

22. France, which had abolished the death penalty in 1981, reported the ratification, on 17 February 1986, of the Sixth Additional Protocol to the European Convention on Human Rights. The reply of France stated that:

> "On 17 February 1986, France ratified Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which provides for the abolition of capital punishment. Article 55 of the Constitution, which provides that correctly ratified treaties override laws, raises an obstacle to reinstatement of capital punishment in France."

23. In Canada, where in 1976 Parliament had removed the death penalty from the Criminal Code, there were legislative initiatives to restore capital punishment. In June 1987, a free vote was held in the House of Commons on the question of whether the death penalty should be reinstated. Reinstatement was rejected by a vote of 148 to 127.

24. In the Constitution of 1987, the Philippines abolished the death penalty, with the exception of certain heinous crimes which have not yet been defined by an enabling act of Congress.

25. Three retentionist States in North Africa and the Middle East reported policy changes regarding the use of capital punishment and the number of capital offences.

26. Jordan reported that, in view of the impact on Jordanian society of the rape of a female under 15 years of age, it was deemed fit to make the punishment for this crime more rigorous by imposing the death penalty so as to prevent such abnormal rapes. Thus, law No. 9 of 1988 amending the penal code was promulgated in order to deter offenders.

27. Tunisia reported that President Zine El Abidine Ben Ali, after taking office on 7 November 1987, suspended all executions of capital punishment. Consequently, none has been carried out after that date and the number of capital sentences has been substantially reduced from 19 in 1986 to 6 in 1987 and 1 in 1988. Those sentences have been commuted.

28. The reply of the United Arab Emirates cites Federal Act No. 3 of 1987 providing for the enactment of a penal law embodying capital punishment for a number of offences, and Federal Act No.6 of 1986, providing the death penalty for offences related to narcotic drugs.

29. In 1986, Mauritius enacted the Dangerous Drugs Act, imposing the death penalty on every drug trafficker found guilty of importing drugs into the country, thereby increasing the number of offences for which capital punishment may be imposed.

30. In a letter dated 11 May 1990, addressed to the Secretary-General of the United Nations (A/45/275-E/1990/74), Albania transmitted excerpts from the report of the Vice-Chairman of the Council of Ministers to the seventh session of the eleventh legislature of the People's Assembly, concerning penal legislation reforms in that country. According to that report, at present the penal code includes 34 crimes punished by death, 11 of which refer to crimes committed in time of war or during a state of emergency. As a rule, capital punishment is applied exclusively to crimes posing a major threat to society, while for many crimes it has not been applied for many years. Further, the report states that the death penalty, as an extraordinary measure, is limited to crimes such as betrayal of the homeland and espionage, terrorist and sabotage activities, embezzlement of socialist property in special conditions, plundering of socialist and individual property, and premeditated murder. In addition, there is a proposal that capital punishment should be lifted not only for pregnant women, as was the case in the past, but also for women in general.

31. The Byelorussian Soviet Socialist Republic reported that:

"The Fundamentals of the Criminal Legislation of the USSR and the Union Republics have been prepared and published for discussion by the people. This document significantly narrows the range of offences for which capital punishment, an exceptional sanction, may be imposed."

According to the same document, the death penalty would not be imposed on women, men who at the time of sentencing have completed their sixtieth year of age, and persons who committed an offence punishable by death before their eighteenth birthday. On the other hand, under the existing legislation of the Byelorussian SSR, persons who prior to committing the offence had not attained their eighteenth year, and pregnant women, may not be sentenced to death. The Byelorussian SSR also reported that, in accordance with the Fundamentals of the Criminal Legislation of the USSR, the Ministry of Justice has begun work on the preparation of a new criminal code that would considerably narrow the list of offences punishable by death.

32. Poland reported that the possibility of abolition of capital punishment is actually being discussed in Parliament and that the provisions of the criminal code of 1969 imposing the death penalty for offences other than military are going to be abrogated in 1990.

33. The Union of Soviet Socialist Republics provided the same information as that mentioned in the reply of the Byelorussian SSR concerning the draft of the Fundamentals of the Criminal Legislation, adding that on 28 November 1989 the Supreme Soviet of the USSR adopted a decree on an amnesty for former servicemen of the contingent of Soviet forces in Afghanistan who committed crimes, in accordance with which these persons were released from criminal responsibility for crimes they have committed during their military service in Afghanistan (December 1979 to February 1989). Regarding the new draft, the Soviet reply stated that it provides merely for the possibility of capital punishment, without requiring its imposition.

34. Yugoslavia reported that capital punishment has been abolished in the Criminal Code of the Republic of Slovenia and that, although the Federal Penal Code contains a relatively large number of offences for which capital punishment can be imposed, it is, in practice, imposed only for homicide. Yugoslavia also reported that the provisions of article 6 of the International Covenant of Civil and Political Rights are consistently incorporated in the regulations in force as are the provisions of the safeguards guaranteeing protection of the rights of those facing the death penalty. In addition, political and legislative bodies are expected to review a number of proposals for limiting, and even eliminating, capital punishment.

35. Although 222 persons have been sentenced to death in Turkey during the period under review, only two have been executed. According to the Government's reply, the last execution was carried out on 25 October 1984. Abolition of capital punishment is frequently the subject of public debate. The Turkish Bar Associations Union and a number of other associations advocate abolition. Nevertheless, instead of abolition, current policy aims at decreasing the number of felonies punishable by capital punishment. To this end, a draft bill has been

submitted to Parliament, with a view to amending various provisions of the Criminal Code which provide for capital punishment.

36. The highest number of judicial and statutory changes have been reported by the United States of America with respect to developments in various federal and State jurisdictions. As a general rule the abolition of the death penalty came as a result of court decisions rather than legislative action. Many court cases have centred on the lack of standards for imposing the death penalty and the resulting capriciousness with which some defendants have been sentenced. In 1984, for example, the mandatory death penalty statute of New York was struck down by virtue of a judicial ruling because it allowed no flexibility for mitigating factors that could have justified a lesser sentence. Similarly, in Massachusetts the death penalty was struck down in whole by the State Supreme Court, which held that the State law's provision for a death penalty only after a jury trial was unconstitutional because it was likely to discourage defendants from asserting the right to plead not guilty. Thirty-seven of the 50 States authorize the death sentence.

37. There has been a substantial number of statutory changes relating to capital punishment in the United States, partly aimed at its reinstatement after the judicial decisions mentioned above, at changing the method of execution and at redefining capital offences (see annex II, sect. F).

38. With respect to policy changes at the federal level, it was reported that, because of the two levels of jurisdiction (State and federal) in the United States judicial system, certain crimes may be punishable by death when tried by State courts, while this would not be the case in federal courts. Over the years, certain crimes that have had significant national impact have been added to federal jurisdiction, while still remaining prosecutable in the States. Thus, while types of offences punishable by death in federal courts have increased, the total number of offence types across federal and State jurisdictions remained constant. Since 1984, the United States Congress established federal jurisdiction for two new capital offences, which were defined as part of the Anti-Drug Abuse Act of 1988. The first offence is working in furtherance of a continuing criminal enterprise, that is, violation of federal drug laws as part of a continuing series of such violations by a person acting in concert with at least five other persons with respect to whom he occupies a leadership position and from which he derives substantial income, or trafficking in very large amounts of drugs and, during the course of such an offence, killing or ordering the killing of another person. The second offence is committing any federal drug felony and, during the course of such a crime, killing or ordering the killing of a federal, State or local law enforcement officer. There are 15 other offences in the federal criminal code - 13 types of murder, plus espionage and treason - that carry the death penalty but are not enforceable owing to a 1972 Supreme Court decision.

39. The number of death sentences and executions in the United States has increased during the 1980s. About 300 persons per year have been sentenced to death during the period covered by this report. Since 1976, when the death penalty was reinstated by the United States Supreme Court, until the end of 1988, the United States had carried out a total of 104 executions: 11 between 1976 and 1983 and 93 between 1984 and 1988.

40. From the information provided by responding countries, it could be concluded that from the statutory legal point of view there is an increasing trend towards abolition. Seven of the responding countries abolished the death penalty during the period covered by this report and one country undertook the international obligation not to reinstate it again. Moreover, four retentionist countries substantially reduced the number of death sentences and executions. Only one retentionist country reported an increase in the number of executions. These findings differ from those of the third survey in 1985 (E/1985/43 and Corr.1, para. 28). It should be noted, however, that some of the countries where, according to Amnesty International and other reliable sources, 7/ most executions have actually been carried out during the past few years either did not respond to the inquiry or did not provide relevant data. In this connection, operative paragraphs 3 and 5 of Council resolution 1989/64 should be particularly recalled.

III. REVIEW OF THE STATUS OF CAPITAL PUNISHMENT

A. Capital punishment in fact

41. The replies received from Governments do not provide sufficient data for a general analysis of the global use of capital punishment. Since the vast majority of retentionist States did not reply, this is particularly true for the actual number of death sentences and executions. Of the 23 responding States that retain capital punishment, three Governments (Byelorussian SSR, Iraq and USSR) did not provide any statistical data and one (United Arab Emirates) provided data only on sentences. Of the 20 States for which data on sentences and executions are available, no death sentence has been imposed in Maldives, and no execution has been carried out in Belgium, Brunei Darussalam, Greece, Ireland, Maldives, Philippines, and Qatar (see annex III, table 7).

42. In the remaining countries altogether, 2,429 capital sentences and 314 executions were reported. Of these, 1,513 death sentences were imposed and 93 executions were carried out in the United States of America. Considerable numbers of death sentences were also reported by Turkey (222), Thailand (190) and the Philippines (170). Apart from the United States, the highest number of executions took place in Poland, Thailand and Tunisia (38 each).

43. The vast majority of death sentences and executions concerned men over 18 years of age. Women were sentenced to death in Belgium, Jordan, the United States, Turkey, Singapore, Japan and the Republic of Korea, but were executed in only five cases - two in Singapore, one in the Republic of Korea, one in Jordan and one in the United States. Minors have been sentenced to death in the Republic of Korea and the United States, which also reported the only case in which a person under 18 years of age was actually executed.

44. Of the 2,429 capital sentences reported, 2,157 were imposed for offences against the person, above all for murder. Indonesia, the Philippines, Turkey, Tunisia and the Republic of Korea reported a total of 144 death sentences for offences against the State; Mauritius, the Philippines, Singapore and Thailand together reported 37 death sentences for drug offences, Tunisia and the United Arab

Emirates reported together five death sentences for rape; Jordan reported two sentences for divulging information to the enemy, the United Arab Emirates reported one sentence for incest; and Belgium reported two death sentences for the taking of hostages. Similarly, 241 of the 314 reported cases of executions related to offences against the person; Indonesia, Tunisia and the Republic of Korea reported a total of 16 executions for offences against the State, Singapore reported six executions for drug offences and one for the use of firearms, the Republic of Korea reported three executions for offences against property, Jordan reported two for divulging information to the enemy, and Tunisia reported one execution related to rape.

45. On 31 December 1988, a total of 2,256 persons were reported to be on death row in 10 countries. The United States accounted for 2,124, Japan reported 38, the Republic of Korea and Singapore 29 each, the Philippines 16, Indonesia seven, Mauritius five, Yugoslavia four, Tunisia three and Hungary one. Although the Philippines did not specify the fate of 16 persons remaining on death row at the end of 1987, it did not carry out any executions since 1976. Yugoslavia reported that legal proceedings for appeal or pardon were under way for all four persons remaining on death row.

B. Capital offences in law

46. The replies from the 23 retentionist States and the five abolitionist States for ordinary crimes only, provided information on the types of offences subject to capital punishment. In the second category of abolitionist States capital punishment may only be imposed for treason, piracy and typical military offences such as mutiny or espionage. Spain reported that the new Military Criminal Code of 1985 has defined the expression "in times of war" in article 15 of the Spanish Constitution of 1978 as applying exclusively to an international war formally declared.

47. The responding retentionist States reported a wide range of offences against persons (homicide, rape, robbery etc.), against the State (treason, offences against the head of State, conspiracy to overthrow the Government) and typical military offences as subject to capital punishment. Some States also allow the death sentence for the submission of false evidence leading to the execution of an innocent person, illegal drug-trafficking, kidnapping, hijacking, abetting the suicide of a child or insane person, poisoning the public water supply, arson or flooding of dwelling structures, use of and trafficking in firearms and similar offences.

48. Accordingly, it seems that not all the reported offences subject to capital punishment are in line with the safeguards guaranteeing protection of the rights of those facing the death penalty adopted by the Economic and Social Council (see annex to Council resolution 1984/50), in particular the first safeguard, according to which "capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences". Moreover, not all the reported offences seem to comply with the provisions of article 6, paragraph 2, of the

International Covenant on Civil and Political Rights, which stipulate that the death penalty may be imposed only for the most serious crimes. For example, offences aimed at the domination of a social class or at overthrowing the basic economic and social orders, and theft in aggravated circumstances, sexual intercourse with a female relative under 15 or arousing of religious and sectarian feelings and propagation of Zionist ideas may not stand the test of a "most serious crime" as understood in the safeguards and in article 6 of the Covenant, particularly in view of its restrictive interpretation 8/ provided by the Human Rights Committee, at least for those States by which it has been ratified.

IV. EFFORTS OF THE UNITED NATIONS OFFICE AT VIENNA

49. By cable of 21 February 1989 to the Government of Barbados, the Director-General of the United Nations Office at Vienna joined the appeals of other organizations, in particular Amnesty International, for commutation of the death sentences imposed on two offenders for a crime committed when they were only 17 years old. This step was taken in view of the previous consultations with the Government on this matter and the responsibility of the United Nations Office at Vienna for monitoring compliance with the international standards prohibiting the imposition of the death penalty on persons under 18 years of age at the time of the crime, that is, the International Covenant on Civil and Political Rights (art. 6, para. 5), to which Barbados is a Party, as well as provision 3 of the United Nations safeguards guaranteeing protection of the rights of those facing the death penalty.

50. On 21 November 1989 the Barbados Parliament amended the Juvenile Offenders Act, raising the minimum age for the imposition of a death sentence to 18 years at the time of the offence, thus bringing its law into line with international criminal justice and human rights standards. Shortly before this change in the law, on 20 November, the Governor General of Barbados commuted four death sentences, among them those of the two offenders referred to in the preceding paragraph.

V. RESEARCH AND STUDIES

51. Only 13 of the 55 replies from responding States contain references to governmental or academic research on capital punishment.

52. Canada reported that the Department of National Defence is conducting a review of its laws that provide for capital punishment. France cited two recent studies published by the Institute of Comparative Law of the University of Paris. The Federal Republic of Germany cited three recent articles in legal journals. Japan referred to two studies conducted by the Prime Minister's Office and by the Research and Training Institute of the Ministry of Justice. The reply from Spain cited seven studies on the death penalty published in that country since 1980. Tunisia referred to the annual report of the Tunisian League of Human Rights. Mexico reported that the Mexican section of Amnesty International conducted a debate on capital punishment in late July 1989. The reply from the USSR cited one

study (Capital punishment: for and against) carried out by a group of authors and published in 1989.

53. Poland reported that public opinion polls are conducted almost every year to register the attitude of the population towards capital punishment. It was also stated that many journalists write on the subject and that almost every juridical work on criminal matters discusses the issue, and cited four main works. In addition, an International Abolition Conference was held in Poland in 1989 and the Polish Government has initiated the reform of criminal law, with the objective of abolishing the death penalty.

54. Portugal reported that the University of Coimbra (Faculty of Law) acted as host for an international colloquium on the death penalty from 11 to 16 September 1967 to mark the one hundredth anniversary of the abolition of the death penalty in the country. The reports of the colloquium were published in the same year. Portugal also cited another study published in 1968.

55. Yugoslavia reported that the Federal Secretariat for Legislation and Administration has occasionally undertaken research for official purposes and cited four major studies carried out by individual scholars.

56. The most comprehensive bibliography and documentation on governmental and non-governmental studies, statistical analyses and comparative research on capital punishment was provided by the United States. The reply stated that the United States Government does not have a special programme to promote and fund research on capital punishment, but that there are numerous federal mechanisms that fund well-conceived projects initiated by qualified researchers.

57. The Arab Security Studies and Training Centre provided an extensive contribution outlining the major policy and legal views on the question of capital punishment prevailing in the Arab countries and reported on the submission of a paper to the International Conference on the Death Penalty, in Siracusa, Italy, in 1987. The Centre also indicated its willingness to contribute further to the study of the issue.

58. The United Nations Interregional Crime and Justice Research Institute (UNICRI) is preparing an International Bibliography on Capital Punishment. During the period covered by the report two editions were issued, in 1984 and 1987. The last covers approximately 50 years. The report prepared by UNICRI, entitled "Main trends in research on capital punishment, 1979-1983", which was mentioned in the previous report of the Secretary-General on capital punishment (E/1985/43 and Corr.1), was published in the Japanese Journal of Criminal Psychology in 1985, in the Revue Internationale de criminologie et police technique in 1986 and in the Crime Prevention and Criminal Justice Newsletter: Special Issue on Capital Punishment, also in 1986. The report was updated to cover research carried out up to 1986 and was submitted to the International Conference on the Death Penalty, held in Siracusa, Italy, from 17 to 22 May 1987 (organized by UNICRI in co-operation with the International Institute of Higher Studies in Criminal Sciences). As part of the Conference, the Institute organized a panel on United Nations research and activities on capital punishment, which dealt with the current

work of the Committee on Crime Prevention and Control, the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities and UNICRI. The updated report on the main trends in research on capital punishment and the fourth edition of the International Bibliography on Capital Punishment were published, as part of the Acts of the Conference, in the Revue internationale de droit penal in 1987. The report and the bibliography were reprinted in July 1988 in The Death Penalty - A Bibliographical Research 9/ and the report was also published in The Death Penalty. For and Against. 10/ The Australian Institute of Criminology has published a special issue of Trends and Issues in Crime and Criminal Justice on capital punishment, in February 1987.

VI. CONCLUSIONS

59. As the present report is mainly based on replies received from less than one third of the membership of the United Nations, its findings cannot be regarded as reflecting world-wide trends in capital punishment. Moreover, information was not available from the majority of the retentionist States, especially those which resort to the death penalty most frequently. Furthermore, the number of responses declined from 64 for the period 1979-1983 to 55 for the period 1984-1989. While the number of reported sentences increased from a total of 1,364 to 2,429, the number of executions decreased from 379 to 314. Notwithstanding these limitations and the increased number of death sentences (a comparison with the previous survey cannot be done since the countries providing information are different), it should be noted that 11 countries have abolished capital punishment since 1984 (i.e. six countries in the period 1984-1988 and five in 1989-1990) against only three during the period from 1979 to 1983. This constitutes a significant trend towards abolition, which should be properly registered also because it is widespread in almost all regions of the world.

60. In addition, there are 21 countries which should be considered abolitionist, de facto, since no executions have taken place for 10 years or more. As a note of caution, however, it should be borne in mind that lengthy periods of de facto abolition do not always signify a permanent or irrevocable policy. There is always the possibility of executions being resumed, especially when national crises occur. In this respect, it should be recalled that in 1980 the General Assembly began considering whether there should be a second optional protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of capital punishment.

61. The most significant development since 1984 was the adoption of this Protocol by the General Assembly at its forty-fourth session (resolution 44/128). The world community has, therefore, for the first time in history, created a legal instrument aimed at the total abolition of capital punishment.

62. It should also be recalled that the Hood report points out that many States tend to regard the ultimate sanction as an antidote to crime problems perceived as rampant. 11/ Nevertheless, a substantial number of countries that have introduced the death penalty for a wider range of offences have not enforced it. It therefore appears that capital punishment has a far greater symbolic than practical

significance. Research has also failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment.

63. On the basis of an analysis of the replies to the questionnaire on the safeguards, and in the light of other available information, the report concludes that, while all responding countries stated that the provisions of the safeguards were communicated to judges, lawyers, police, prison officers and the accused, international experience demonstrated that still more needs to be done to ensure that the formalities of the law and procedure are invariably translated into the realities of enforced rights. It also concludes that countries with discretionary capital punishment employ various mechanisms designed to limit executions to the few most serious cases. This raised the issue of whether the law and procedures resulted in equitable or in arbitrary and discriminatory enforcement. The findings of many criminological studies of decisions by prosecutors, juries, judges and courts of appeal have supported the conclusion that no legal formula can be devised that will eliminate unacceptable arbitrariness and discrimination in the use of the death penalty. Experience has therefore shown the necessity of monitoring the use of death penalty statutes.

64. Many countries have cited public opinion as one of the major reasons for retaining the death penalty. A number of countries, however, have abolished the death penalty and consistently resisted attempts to reinstate it, despite popular support for it, while two countries have cited public opinion as the reason for abolition. There is therefore a clear need to distinguish between sporadic popular support for capital punishment and well-informed opinion.

65. Efforts should be made to reverse popular support for capital punishment, which is often a spontaneous reaction to certain forms of crime. But the small number of candidates for execution under any conceivable régime of capital punishment means that executions cannot be regarded as a way of reducing the incidence of serious crimes. World crime trends show that violent crimes number in the hundreds of millions, prison populations in the millions. Executions may be about a thousand a year. Accordingly, educational measures should be devised to emphasize respect for human life, while stressing the findings of criminological research on erroneous perceptions about the deterrent effect of capital punishment.

Notes

1/ Argentina, Australia, Austria, Belgium, Bolivia, Brunei Darussalam, Byelorussian Soviet Socialist Republic, Canada, Cape Verde, Colombia, Costa Rica, Denmark, Ecuador, Finland, France, German Democratic Republic, Germany, Federal Republic of, Greece, Haiti, Hungary, Indonesia, Iraq, Ireland, Japan, Jordan, Liechtenstein, Luxembourg, Maldives, Malta, Mauritius, Mexico, Netherlands, New Zealand, Norway, Panama, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Singapore, Spain, Sweden, Thailand, Tunisia, Turkey, Tuvalu, Union of Soviet Socialist Republics, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela and Yugoslavia.

Notes (continued)

2/ Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40), annex V.

3/ Abolitionist for ordinary crimes means that there is no provision for capital punishment under ordinary criminal law, but that it may be imposed under military law or exceptional circumstances, such as war.

4/ Roger Hood, The Death Penalty, A World-Wide Perspective (Oxford, Clarendon Press, 1989).

5/ Amnesty International, The death penalty: list of abolitionist and retentionist countries (London, 1990), AI index: Act 50/01/90.

6/ German Democratic Republic, Law Gazette, part I (1987), No. 31, p. 301.

7/ See Amnesty International, When the State kills ... The death penalty v. human rights (London, Amnesty International Publications, 1989), p. 263; Hood, op. cit., pp. 43 ff.

8/ Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40), annex V.

9/ The Death Penalty - A Bibliographical Research (Rome, UNSDRI, 1988), publication 32.

10/ The Death Penalty: For and Against (Moscow, Yuridicheskaia Literature, 1989).

11/ Hood, op. cit.

Annex I

RETENTIONIST COUNTRIES

The following 92 countries retain and use the death penalty for ordinary crimes: a/

Afghanistan
Albania
Algeria
Angola
Antigua and Barbuda
Bahamas
Bangladesh
Barbados
Belize
Benin
Botswana
Bulgaria
Burkina Faso
Burundi
Byelorussian SSR
Cameroon
Central African Republic
Chad
Chile
China
Congo
Cuba
Democratic People's Republic of Korea
Dominica
Egypt
Equatorial Guinea
Ethiopia
Gabon
Gambia
Ghana
Guatemala
Guinea
Guinea-Bissau
Guyana
Hungary
India
Indonesia
Iran (Islamic Republic of)
Iraq
Jamaica
Japan
Jordan
Kenya
Kuwait
Lao People's Democratic Republic
Lebanon
Lesotho
Liberia
Libyan Arab Jamahiriya
Malawi
Malaysia
Mali
Mauritania
Mauritius
Mongolia
Morocco
Mozambique
Myanmar
Nigeria
Oman
Pakistan
Poland
Qatar
Republic of Korea
Rwanda
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Saudi Arabia
Sierra Leone
Singapore
Somalia
South Africa
Sudan
Suriname
Swaziland
Syrian Arab Republic
Thailand
Tonga
Tunisia
Turkey
Uganda
Union of Soviet Socialist Republics
United Arab Emirates
United Republic of Tanzania
United States of America
Viet Nam
Yemen
Yugoslavia
Zaire
Zambia
Zimbabwe

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a/ Most are known to have carried out executions during the past 10 years. For some countries, since there is no record of executions, it is extremely difficult to ascertain whether or not executions have in fact been carried out.

Annex II

TYPES OF CAPITAL OFFENCES IN RETENTIONIST COUNTRIES a/

A. North Africa and the Middle East

Iraq

Homicide committed in one or more of the following aggravated circumstances: premeditation, ambush, use of poison or explosives, killing of ascendants, one killing combined with another killing or attempt to kill, killing in preparation for the commission of a felony, with despicable motives and brutality; sexual intercourse with a female relative under 15 years, theft in one or more aggravated circumstances, high treason, contact and communication with and assistance to the enemy in the occupation of national territories, spying in time of war, conspiracy to overthrow the Government by force, arousing of religious and sectarian feelings and propagation of Zionist ideas; offences of trafficking in narcotic drugs.

Jordan

Premeditated homicide, rape and murder of a minor, rape of a female under 15 years of age, spying for the enemy, attempting to change the Constitution of the State by illegal means, attempting armed rebellion against the authorities or instigating such action, abandoning or surrendering in a dishonourable manner any fortification, site, station etc., laying down arms in a dishonourable manner before the enemy, engaging in intelligence work with the enemy or providing the enemy with treasonable information, providing weapons or ammunition to the enemy or knowingly giving shelter to the enemy other than a prisoner of war, serving with the enemy after being taken prisoner of war.

Qatar

Murder, submission of false information leading to the indictment or execution of an innocent person, serious offence against the Amir, bearing of arms against the State, instigating soldiers in time of war to serve the interests of an enemy State, divulging military secrets, drug trafficking.

Tunisia

Premeditated murder, rape with use of violence, rape of minors under 10, destruction by explosion of arsenals or other State property, offences against the external security of the State and the life of the head of State, treason, conspiracy to change the Government, overturning of a train, several military offences.

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a/ Summaries are based on replies received.

United Arab Emirates

Premeditated murder or murder associated with another crime or committed against a parent or public servant or a person entrusted with public service while performing such service or because of performing it, or if poison or explosives are used in commission of murder; abduction leading to the death of the victims, rape; several offences against the external security of the State; attempting to overthrow the Government or seize power by force, committing an act of aggression against the safety or freedom of the Head of State, the Deputy Head of State or members of the High Council of the United Arab Emirates or a foreign Head of State or wilfully endangering their life or freedom; forming a gang which commits robbery or resists the public authorities by force in order to prevent the implementation of laws, commanding such gang or assuming the leadership thereof; drug-related offences pursuant to Federal Act No. 6 of 1986 on the control of narcotic drugs.

B. Africa south of the Sahara

Mauritius

Murder, plotting against the sovereign, stirring up war against the sovereign, plotting against established Government, importation of dangerous drugs.

C. Asia and the Pacific

Brunei Darussalam

Murder, abetting the suicide of a child or insane person, gang robbery with murder, waging or attempting to wage war against the Sultan, mutiny, drug trafficking, false evidence causing the execution of an innocent person, carrying firearms in security area, military offences such as assisting the enemy or failure to suppress mutiny.

Indonesia

Premeditated murder, larceny, theft resulting in serious injury or death, piracy resulting in death, intentionally depriving the President of life or liberty or rendering the President unfit to govern, collaborating with foreign Power with the intent to induce such Power to conduct hostilities or wage war against the country (when war actually ensues), intentionally rendering assistance to the enemy in time of war, attempted murder or kidnapping of the head of a friendly State, subversion, illicit drug trafficking, severe economic crimes undermining national economy, crimes concerning atomic energy; desertions and other offences of military criminal law.

Japan

Intentional homicide, causing death by endangering traffic, robbery, rape, duelling, poisoning public water supply, overturning of a train or causing aircraft

to crash, seizure of aircraft, killing of a hostage, inducement of foreign aggression, conspiracy to insurrection, assistance to enemy, arson or flooding of inhabited structure, destruction by detonation, use of explosives.

Maldives

Premeditated murder, assassination of the President, act impairing the sovereignty, independence or territorial integrity of the Republic.

Republic of Korea

Murder, robbery causing death, piracy causing death, insurrection, inducement of foreign aggression, benefiting the enemy, use of and destruction by explosives, arson or flooding of dwelling structures, obstruction of traffic or use of drinking water which causes death or injury to others, insurrection, espionage, aid to the enemy, delivery or destruction of military installations, various military offences such as surrender, desertion, insubordination.

Singapore

Use of and trafficking in firearms and explosives, kidnapping, murder, abetment of suicide of child or insane person, gang robbery with murder, intentional false evidence leading to execution of the victim, waging or attempting to wage war against the Government, offences against the President, drug trafficking, various military offences such as assisting the enemy, mutiny.

Thailand

Murder, rape causing death, rape by carrying a gun which causes grievous bodily harm, indecent act with a child under 15 causing death, kidnapping, robbery causing death, cruel gang-robbery, malfeasance in office, violence against the King or Queen, insurrection, offences against the external security of the Kingdom, arson, drug trafficking, seizing of an aircraft, various military offences.

D. Eastern Europe

Byelorussian Soviet Socialist Republic

Premeditated murder under aggravating circumstances, rape, theft of State or public property in particularly large amounts, treason, espionage, acts of terrorism, including those against the representative of a foreign State, sabotage, banditry, accepting a bribe, attempt on the life of a member of the security police (militsija) or a member of the voluntary organization to support the police (narodnyje druzhinniki), hijacking of aircraft, actions interfering with the work of a correctional labour institution, disregard of a mobilization call, manufacturing or placing in circulation counterfeit money or securities, violation of the rules governing currency operations, several military offences.

Hungary

Aggravated homicide, acts of terrorism causing death or resulting in particularly great detriment or committed in time of war, seizure of aircraft resulting in death; genocide, violence against civilian population if it results in death, killing of truce negotiator, other war crimes; aggravated cases of desertion, refusal to serve in time of war, violation of service duty, if committed in a combat situation or resulting in great detriment, aggravated cases of mutiny, disobedience to fighting order in time of war, endangering combat capacity, evasion of duty to fight, violation of commander's duty.

Poland

Homicide (aggravated cases), organizing or directing the exploitation of a socialized economic unit to capture a property of high value in detriment of such units, causing grave disturbance to the national economy, armed robbery, high treason, violent attempt to assassinate a public official or political activist, acting to weaken the people's power, provoke public disorder or widespread discontent or grave disturbance in the national economy by destroying, causing damage or putting out of order production plants or devices or other property of vital importance to the Republic of Poland, or making impossible or difficult the operation of plants, devices or establishments of vital importance to the Republic of Poland. (N.B.: According to the reply of Poland, these provisions will be abrogated in 1990). Military offences (in combat situations only): not carrying out or defying an order or carrying out an order in a manner contrary to its purpose.

Union of Soviet Socialist Republics

Premeditated murder under aggravated circumstances, rape under particularly aggravated circumstances, theft of State or public property in particularly large amounts, treason, espionage, acts of terrorism, acts of terrorism against the representative of a foreign State, sabotage, particularly dangerous State crimes against another State, organization of particularly dangerous State crimes, banditry, actions interfering with the work of a correctional labour facility, manufacture or placing in circulation of counterfeit money or securities under aggravated circumstances, violations of the rules governing currency transactions under aggravated circumstances, taking of a bribe under particularly aggravated circumstances, attempt on the life of a member of the security police (militsija) or a member of the voluntary organization to support the police (narodnyje druzhinmiki) under aggravated circumstances, hijacking of an aircraft resulting in death or in the infliction of severe bodily injuries, disregard of a mobilization call in time of war, several military offences committed in time of war or in a combat situation.

Yugoslavia

Aggravated homicide, homicide in a cruel or perfidious manner, unscrupulous vengeance (blood revenge), killing of an official person safeguarding public order or an arrested person or several persons, aggravated robbery combined with

premeditated murder, politically motivated assassination, grave violence threatening the security of the State or committed during mobilization or war, counterrevolutionary attack against the State, grave political violence, armed rebellion, terrorism, destruction of an important establishment of the national economy, sabotage, espionage, organizing and smuggling groups, individuals, weapons or ammunition into Yugoslavia, association for committing serious offences against the State, endangering air transport, death casualties as a result of intentional homicide, several military offences; genocide, war crimes against civilians, wounded and sick persons, prisoners, surrendered enemies, use of forbidden means of warfare, mass killings.

E. Western Europe and other States

Belgium

Premeditated murder, parricide, poisoning; murder committed to facilitate or escape punishment for theft or extortion, wanton or fraudulent destruction of records, original minutes or acts belonging to the public authorities, securities, currency notes, bills of exchange, negotiable instruments and bankable bills embodying an obligation, destruction or damaging of movable property belonging to others; attempt on the life or person of the King (unless it did not result in impediment of his freedom or did not cause him bloodshed, injury or sickness), the life of the Heir to the Throne, the life of the Queen, and members of the Royal Family, the Regent or ministers exercising the King's constitutional powers (when the death penalty is prescribed by the Criminal Code); seizure of hostages if it caused incurable illness, permanent physical or mental disability, complete loss of use of an organ, serious injury or death, or if seizure was combined with torture; arson leading to death, blowing up of buildings, ships, boats, cars, coaches, stores, building sites or other structures leading to death, destruction of various facilities resulting in death, flooding with fraudulent and malicious intent of a mine; various offences when committed in time of war; several offences against the State; several military offences, including treason and espionage; seizure of a vessel, or attempt thereof, with violence or threats against the captain; in the case of a captain or pilot in charge of a vessel, running it aground or destroying it, losing it or seriously damaging it by any means other than fire, with criminal intent, if the act resulted in death; compromising the navigability or safety of an aircraft or an attempt to do so; hijacking or attempt to do so.

Greece

Intentional homicide, explosion resulting in death, robbery, conspiracy against the integrity of the State, high treason, rendering military assistance to the enemy, embezzlement against the State, act of violence against the President of the Republic, sacrilege of dead and theft committed on a wounded or shipwrecked person, revolt of prisoners, placing obstacles obstructing the movement of aircraft, causing damages with an aircraft, causing the sequestration and capture of aircraft; several military offences.

Ireland

Capital murder (defined as murder of a member of the police (Garda Siochana) acting in the course of his duty), murder of a prison officer acting in the course of his duty, murder done in furtherance of an offence or in the course or furtherance of the activities of an unlawful organization, politically motivated murder of the head or member of Government or diplomatic officer of a foreign State; treason. Military offences: culpable failure by an officer in the exercise of his command in the face of the enemy, cowardice, desertion or treachery in the face of the enemy, serving with or assisting the enemy having been made a prisoner of war, joining in a mutiny with violence.

Turkey

Homicide, rape leading to the victim's death, false accusation leading to the accused person's execution, corspiracy in drug trafficking, repeated sentence to life imprisonment, kidnapping, high treason in time of war, offences aimed at the domination of a social class or at overthrowing the basic economic and social orders, attempt to overthrow the Government or constitution by force, using minors in committing a drug-related crime of a grave nature.

United States

(a) Federal capital offences enacted after the Furman decision of the United States Supreme Court in 1972

Intentional killing as a result of major drug-trafficking offences, intentional killing of a law enforcement official, death resulting from aircraft hijacking, espionage by a member of the Armed Forces, military offences in time of peace and war such as rape, desertion, mutiny, aiding the enemy.

(b) In 37 of the 50 States (Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wyoming) capital offences include first-degree murder, aircraft piracy, treason, train wrecking, kidnapping, murder of a law enforcement official.

Annex III

SUPPLEMENTARY INFORMATION a/

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a/ The data presented in the following tables are not limited to the period 1984-1988.

Table 1. Status of capital punishment: abolitionist for all crimes a/

Country	Date of abolition	Date of abolition for ordinary crimes	Date of last execution
Australia	1985	1984	1967
Austria	1968	1950	1950
Bolivia	1967	..	..
Cambodia	1989	..	..
Cape Verde	1981	..	1835
Colombia	1910	..	1909
Costa Rica	1877	..	..
Czechoslovakia	1990	1990	..
Denmark	1978	1933	1950
Dominican Republic	1966	..	..
Ecuador	1897	..	..
Finland	1972	1949	1944
France	1981	..	1977
German Democratic Republic	1987	..	..
Germany, Federal Republic of	1949	..	1949
Haiti	1987	..	1972
Holy See	1969	..	..
Honduras	1956	..	1940
Iceland	1928	..	1830
Kiribati	..	..	b/
Liechtenstein	1989	..	1785
Luxembourg	1979	..	1949
Monaco	1962	..	1847
Namibia	1990	1990	..
Netherlands	1983	1870	1952
New Zealand	1989	1962	1957
Nicaragua	1979	..	1930
Norway	1979	1905	1948
Panama	1918	..	1903
Philippines	1987	..	1976
Portugal	1976	1867	1849
Romania	1989	..	1989
San Marino	1865	1848	1468
Solomon Islands	..	1966	b/
Sweden	1973	1921	1910
Tuvalu	..	..	b/
Uruguay	1907	..	..
Vanuatu	..	..	b/
Venezuela	1863	..	..

Total: 39

(Note and footnotes on following page.)

(Footnotes to table 1)

Note: Two dots (..) indicate that data are not available.

a/ Countries whose laws do not provide for the death penalty for any crime.

b/ No executions since independence.

Table 2. Status of capital punishment: abolitionist for ordinary crimes only a/

Country	Date of abolition	Date of last execution
Argentina	1984	..
Brazil	1979	1855
Canada	1976	1962
Cyprus	1983	1962
El Salvador	1983	1973
Fiji	1979	1964
Israel	1954	1962
Italy	1947	1947
Malta	1971	1943
Mexico	..	1937
Papua New Guinea	1974	1950
Peru	1979	1979
Sao Tome and Principe	..	b/
Seychelles	..	b/
Spain	1978	1975
Switzerland	1942	1944
United Kingdom of Great Britain and Northern Ireland	1965 c/	1964

Total: 17

Note: Two dots (..) indicate that data are not available.

a/ Countries whose laws provide for the death penalty only for exceptional crimes such as crimes under military law or crimes committed in exceptional circumstances such as wartime.

b/ No executions since independence.

c/ Abolition was for an experimental period of five years. It was made permanent by resolutions of both Houses of Parliament on 18 December 1969.

Table 3. Status of capital punishment: abolitionist de facto a/

Country or area	Date of last execution
Bahrain	1977
Belgium	1950
Bhutan	1964
Brunei Darussalam	1967
Comoros	b/
Côte d'Ivoire	..
Djibouti	b/
Greece	1972
Grenada	1978
Ireland	1954
Madagascar	1958
Maldives	1953
Nauru	b/
Nepal	1979
Niger	1976
Paraguay	1928
Samoa	b/
Senegal	1967
Sri Lanka	1976
Togo	..
Trinidad and Tobago	1979
Total: 21	

Note: Two dots (..) indicate that data are not available.

a/ Countries that retain the death penalty for ordinary crimes but have not executed anyone during the past 10 years or more. In keeping with the system of classification used in the quinquennial reports on capital punishment, these countries can be considered abolitionist de facto in that they have not carried out executions for the past 10 years or more. However, death sentences have continued to be imposed in some and not all of them have a policy of regularly commuting sentences.

b/ No executions since independence.

Table 4. Countries that have abolished the death penalty since 1976

Year	Country	Offences for which the death penalty was abolished	
		All offences	Ordinary offences
1976	Canada		x
	Portugal	x	
1978	Denmark	x	
	Spain		x
1979	Brazil a/		x
	Fiji		x
	Luxembourg	x	
	Nicaragua	x	
	Norway	x	
	Peru		x
1981	France	x	
1982	Netherlands	x	
1983	Cyprus		x
	El Salvador		x
1984	Argentina b/	x	
	Australia c/		x
1985	Australia d/	x	
1987	German Democratic Republic	x	
	Haiti	x	
	Liechtenstein	x	
	Philippines	x	
1989	Cambodia	x	
	New Zealand	x	
	Romania	x	
1990	Namibia	x	
	Czechoslovakia	x	

(Footnotes on following page.)

(Footnotes to table 4)

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a/ Brazil had abolished the death penalty in 1882 but reintroduced it in 1969 while under military rule.

b/ Argentina had abolished the death penalty for all offences in 1921 and again in 1972 but reintroduced it in 1976 following a military coup.

c/ In 1984, the death penalty was abolished in Western Australia, the last Australian state to retain the death penalty for ordinary offences.

d/ In 1985, the death penalty was abolished entirely in Australia when the state of New South Wales abolished it for piracy, treason and arson at military and naval establishments, the only remaining capital offences.

Table 5. Abolitionist countries for all crimes: dates of abolition, last sentence and last execution and changes reported

Responding States	Date of abolition	Date of abolition for ordinary crimes	Date of last sentence	Date of last execution	Changes reported
Asia and the Pacific					
Philippines	1987	..	1986	1976	..
Tuvalu	Before independence		..	..	..
Africa south of the Sahara					
Cape Verde	..	..	..	..	..
Latin America and the Caribbean					
Argentina	..	..	..	..	..
Bolivia	1967	..	..	..	..
Colombia	1910	..	..	..	..
Costa Rica	1882	..	..	..	..
Ecuador	1897	..	..	..	..
Haiti	1987	..	..	..	..
Panama	1918	..	..	..	..
Uruguay	1907	..	..	..	..
Venezuela	1863	..	..	..	..
Eastern Europe					
German Democratic Republic	1987	..	1976	..	Abolition without restriction on 17 July 1987 because of development of socialist State.
Western Europe and other States					
Australia	1985	..	..	..	..
Austria	1968	1950	..	..	..
Denmark	..	..	..	..	..
Finland	1972	1949	..	..	..
France	1981	Ratification of Sixth Additional Protocol to European Human Rights Convention on 17 February 1986.			
Germany, Federal Republic of	1949	..	..	1949	..
Liechtenstein	1989	..	Eighteenth century	Eighteenth century	Abolition by new penal code on 1 January 1989, but in fact death penalty had not been applied for more than 200 years.
Luxembourg	1979	..	..	..	..
Netherlands	1983	..	..	..	..
New Zealand	1989	1962	1961	1957	Abolition on 22 November 1989.
Norway	1979	1905	..	..	..
Portugal	1976	1867	World War I	..	..
Sweden	1973	1921	..	..	..

Note: Two dots (..) indicate that data are not available.

Table 6. Abolitionist countries for ordinary crimes only: dates of abolition and last execution; types of remaining capital offences

Responding States	Date of abolition for ordinary crimes	Type of capital offences	Date of last execution	
			For ordinary crimes	For other crimes
Latin America and the Caribbean				
Mexico	..	Military code: high treason, insubordination resulting in death of a supervisor and offences against military honour.	..	..
		Certain forms of pillaging.	..	..
Peru	1979	Constitution: treason in case of external war.	..	..
Western Europe and other States				
Canada	1976 (reinstatement in 1987 rejected by 148 to 127 votes)	National Defence Act: misconduct in presence of enemy, offences related to security, prisoners of war, espionage, mutiny etc.	1962	1944
Malta	..	Armed Forces Act: siding with the enemy, communication with the enemy, mutiny, failure to suppress mutiny.	..	..
Spain	1978	Constitution and Military Code (applicable only in the case of international war formally declared): treason, espionage, rebellion, sedition, offences against official military duties (insubordination, cowardliness etc.) and assault against military authorities	..	..
United Kingdom of Great Britain and Northern Ireland	1965	Treason, piracy with violence, assisting the enemy.	1964	..

Note: Two dots (..) indicate that data are not available.

Table 7. Retentionist countries: number of sentences imposed and executions carried out and type of offence, 1984-1988

Responding States	Number of persons sentenced					Number of persons executed					Type of capital offences		Number of persons remaining under death sentence 31 December 1988
		Sex		Age			Sex		Age				
	Total	M	F	Under 18	Over 18	Total	M	F	Under 18	Over 18	No. sentences	No. executions	
North Africa and the Middle East													
Iraq	..	..	..	..	..	..	..	..	..	..	..	..	..
Jordan	20	19	1	0	20	20	19	1	0	20	18P/2O	18P/2O	0
Qatar	2	2	0	0	2	0	0	0	0	0	2P	0	0
Tunisia	45	45	0	0	45	38	38	0	0	38	24P/17S/4R	29P/8S/1R	3
United Arab Emirates	10	..	..	..	..	..	..	..	..	..	2P(R)/6P/1R/1O	..	..
Africa south of the Sahara													
Mauritius	6	6	0	0	6	2	2	0	0	2	3P/3D	2P	5
Asia and the Pacific													
Brunei Darussalam	3	3	0	0	3	0	0	0	0	0	3P	0	0
Indonesia	4	4	0	0	4	2	2	0	0	2	2PR/1S/1D	1PR/1S	7
Japan	24	23	1	0	24	10	10	0	0	10	24P	10P	38
Maldives	0	0	0	0	0	0	0	0	0	0	0	0	0
Korea (Republic of)	33	32	1	2	31	29	28	1	0	29	29P/4S	19P/7S/3PR	29
Singapore	37	35	2	0	37	26	24	2	0	26	22P/15D	19P/6D/1F	29
Thailand	190	..	..	..	..	38	..	..	..	..	173F/17D	..	..
Eastern Europe													
Byelorussian SSR	..	..	..	..	..	..	..	..	..	..	..	..	..
Hungary	12	12	0	0	12	10	10	0	0	10	12P	10P	1
Poland	52	52	0	0	52	38	38	0	0	38	52P	38P	0
USSR	..	..	..	..	..	..	..	..	..	..	..	..	..
Yugoslavia	18	18	0	0	18	6	6	0	0	6	18P	6P	4
Western Europe and other States													
Belgium	63	56	7	0	63	0	0	0	0	0	40P/21PR/2O	0	0
Greece	..	..	..	..	..	..	..	..	..	..	..	..	..
Ireland	5	5	0	0	5	0	0	0	0	0	5P	0	0
Turkey	222	219	3	0	222	2	2	0	0	2	101P/121S	2P	..
United States	1 513	1 486	25	7	1 506	93	92	1	1	92	1 513P	93P	2 124

Note: P: person; PR: property; S: State; R: rape; D: drugs; F: firearms; O: other. Two dots (..) indicate that data are not available.

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Capital punishment

Report of the Secretary-General

Addendum

1. Additional replies were received to the fourth quinquennial survey on capital punishment (E/1990/38/Rev.1), carried out in pursuance of Economic and Social Council resolution 1745 (LIV), from Chile, Cyprus, Italy, Kuwait and the United Republic of Tanzania. This brings the total number of responding countries to 60. The regional breakdown of all the responses received is as follows: six from North Africa and the Middle East, three from Africa south of the Sahara, nine from Asia and the Pacific, 12 from Latin America and the Caribbean, six from Eastern Europe and 24 from Western Europe and other States.

2. Of the five responding countries, three retain capital punishment (Chile, Kuwait and the United Republic of Tanzania) and two are abolitionist for ordinary crimes (Cyprus and Italy).

3. Chile reported that on 11 March 1990 the President of the Republic submitted to Parliament a draft law that amends the Code of Military Justice, the Penal Code and the Aeronautic Code, abolishing the death penalty and replacing it with life imprisonment. That initiative was taken because the death penalty was considered a violation of the fundamental right to life and a cruel and inhuman punishment, which degraded all persons participating in its application. Other reasons cited were that capital punishment does not offer protection to society and there is no proof of its deterrent effect.

4. Cyprus reported that, by the Criminal Code (Amendment) Law 86 of 1983, the death penalty for premeditated murder was abolished and replaced with life

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* E/1990/92.

imprisonment. The factors contributing to this amendment were social evolution and changed social attitudes which had caused the death penalty to fall into misuse, as well as the influence of the trend towards abolition in many European countries. In 1987 the Council of Ministers, reacting to certain particularly serious crimes, directed the Ministry of Justice to study the possibility of reinstating capital punishment for premeditated murder, in consultation with the Legal Committee of the House of Representatives. On the basis of the report of the Ministry of Justice, the Council of Ministers decided against the idea of reinstatement. The question of reinstatement was discussed again in 1989 by the Parliamentary Legal Committee with the same result.

5. Italy reported that in August 1989 several draft laws were introduced in Parliament in order to abolish capital punishment from the Military Criminal Code for crimes committed in time of war; capital punishment would be replaced by life imprisonment. At the same time, Parliament, by a unanimous vote, expressed itself in favour of the abolition of life imprisonment. Also on 2 January 1989, Italy ratified Protocol No. 6 of the European Human Rights Convention on the abolition of capital punishment.

6. Kuwait reported that since the abuse of, addiction to and trafficking in drugs had seriously intensified in recent years at both the local and international levels and threatened to inflict great harm on society, consideration was being given to increasing the punishment for some offences related to supplying and trafficking in drugs. The matter, however, was still under discussion.

7. The reply from the United Republic of Tanzania indicated that executions were carried out during the reporting period.

8. Chile reported 14 sentences and two executions during the reporting period, all for crimes against the person. Kuwait reported 17 sentences and six executions. Two of the persons sentenced were women and two of the sentences were imposed for abduction, while the remaining were imposed for crimes against the person. At the end of the reporting period one person remained on death row in Kuwait. The United Republic of Tanzania reported that 151 persons were sentenced to death during the reporting period, of which eight were women. Twenty-one persons were executed, while 23 remained on death row. All death sentences and executions were imposed for offences against the person.

Annex

TYPES OF CAPITAL OFFENCES IN RETENTIONIST COUNTRIES

Chile

Abduction of a child of less than 10 years of age for ransom if the child is killed or raped or injured in a specific way, or if the act is committed to impose demands or extort decisions, or if, during the abduction, other illicit acts are committed against the child; abduction of a person between 10 and 18 years of age if followed by homicide, rape or injury in a specific way; causing someone's death by wilful abandonment of duty by a train driver, conductor or brakeman for the purpose of harming any of the persons travelling on the train; rape followed by death of the victim, infanticide and parricide, including killing of ascendants and descendants of the spouse; theft accompanied by violence or intimidation if resulting in homicide, rape or injuries in a specific way; arson followed by death; conspiracy against country's external security resulting in ensuring that foreign power will enter into war against Chile; serving in a military capacity against the country; abuse of authority by a public official, agent or commissioned representative of the Government in cases of some offences against the external security and sovereignty of the State; plotting against the life or physical integrity of others for the purpose of disturbing the constitutional order or public security or of intimidating the population; deprivation of liberty for a similar purpose if followed by homicide, rape or injury in a specific way; sabotage and diversion in time of war if followed by serious injury of a person; organization, incitement or encouragement in time of war to create and seek private militants or groups armed with specific devices; the manufacture, import, export and other acts involving firearms; the parts, explosives and building, repair, use or possession of facilities designed for the manufacture, assembly or storage of the previously mentioned items; bearing of firearms without the proper permit if the weapons in question were intended for use in disturbing police order or security; owning and bearing specific arms or weapons; terrorist activities followed by death, including attempts against the life or physical integrity of the Head of State and members of his family, ministers, senators, parliamentarians, senior officials, judges, prosecutors, diplomats and military forces and members of their families. Several military offences.

Kuwait

Murder, murder using poisonous substances, murder with premeditation or lying in wait; endangering the life of a person when this leads to death, abduction through force, threat or deceit, with the intention of killing, injuring, raping or indecently assaulting the victim, or forcing the victim to practise prostitution, or blackmailing the victim or somebody else, knowingly concealing a kidnapped person; rape, copulation with a female without use of force, threat or deceit, when the offender is an ascendant of the victim or someone entrusted with her upbringing or care or who has authority over her or who is employed as her servant; offences affecting the independence, unity or integrity of the country, joining in any manner the armed forces of a foreign State at war with Kuwait, working as an agent

or informant of a foreign State, interference on behalf of an emeny to undermine the loyalty of the armed forces, encouraging soldiers in time of war to join the service of a foreign State or facilitating the entry of an enemy into the country, revealing defence secrets of the country to a foreign State; attempts against the life, safety or freedom of the Amir or the Crown Prince, attacking by force the Amir's authorities, overthrowing the Government; use or the attempted use of explosives with the intention of killing a person, creating panic or destroying public buildirgs or facilities.

United Republic of Tanzania

Murder, treason, treasonable felony.